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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,563

08/28/2006

Karsten Bohnisch

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10/22/2010

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661

EXAMINER

NICHOLS II, ROBERT K

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

10/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,563	Applicant(s) BOHNISCH ET AL.	
	Examiner ROBERT K. NICHOLS II	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/20/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This office action is responsive to the amendment filed on 08/03/2010. As directed by the amendment: claim 1 has been amended, claims 5, 6 and 8 were previously cancelled, and no new claims have been added. Thus, claims 1-4, 7 and 9 are presently pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claim 1-2, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia (EP 1 050 481) and Stone (US 4,322,020) in view of Meshberg (US 4,008,830).

Regarding claims 1-2 and 9, Garcia discloses a dispenser pack including a metering pump 14, a container 24 having a neck 32, a closing cap 130, a cylindrical wall 190 that encloses an axial aperture 192 that is arranged above an internal flange 196; a retainer 140 for attaching the pump 14 within the aperture 192 of the closing cap 130, wherein an exterior flange of the retainer 140 can be pressed against an annular seal 132 on an outer face of the container neck 32 so as to be sealed by the closing cap 130; a pump housing including a pump cylinder 141 that surrounds a pump chamber whose upper end includes an aperture and whose lower end includes a suction pipe nipple freely exposed (see figures 2 and 3); and a piston shaft 148 which protrudes outward from the pump chamber and at its outer end includes an activation head 16 (see figure 2). Garcia further discloses that the volume of the container 24 that contains the free-flowing medium can be adjusted to the decrease of the volume of the free-flowing medium to be dispensed from the container 24; and an inner hole rim of the seal 132 forms an annular lip resting against the outside of the pump housing 141 so as to be airtight (see figures 1 and 3).

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With further respect to claim 1, Garcia discloses all the elements of the claimed invention but is silent to the teaching of the inner structure of the pump and the medium being enclosed by a bag made of flexible material.

Stone teaches a dispenser pack including a metering pump 3, including a pump housing having a pump cylinder that surrounds a pump chamber 30 (see fig. 3); a pump piston arranged in the pump chamber 30 so as to be slidable in a sealed manner (fig. 3), and includes a piston shaft 18 which protrudes outward from the pump chamber 30 and at its outer end includes an activation head 16; an axial outlet channel that extends through the piston shaft 18 and the pump piston and connects the pump chamber 30 to a dispensing aperture of the activation head 16 (fig. 3); an inlet valve 21 and an outlet valve 19 for the free-flowing medium; and a helical compression spring 23 which impinges on the pump piston in the direction of its home position (see figure 3 and column 5, lines 21-30). Stone further discloses the container having an interior with variable volume wherein the container medium is enclosed by a bag made of flexible material allowing the bags volume to reduce as product is pumped out the container.

It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the pump of Garcia to include inner structure, as taught by Stone, in order to extract fluid product from the container.

Furthermore, a person of ordinary skill has good reasons to pursue the known options or finite number of solutions, i.e. a container including a flexible bag, as suggested by Stone, or a container including a follower piston, for the predictable result of providing a container whose interior volume reduces in conjunction with the

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dispensing of the product, since the finite number of options are within the technical grasp of a person of ordinary skill in the art.

The combination of Garcia and Stone discloses all the elements of the claimed invention except the bag having an upper aperture rim forming a one piece construction with a wall of the container.

Meshberg teaches a dispenser pack wherein the medium within the container is enclosed by a bag made of a flexible material (figs 1, 3 and 4), wherein the bag has an upper aperture rim forming a one piece construction with a wall of the container to avoid the necessity of inserting a flexible bag upon assembly (see figure 4 and column 5, lines 10-15).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of the combination of Garcia and Stone with a bag having an upper aperture rim forming a one piece construction with a wall of the container, as taught by Meshberg, in order to avoid the necessity of inserting a flexible bag upon assembly.

Regarding claim 7, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia (EP 1 050 481), Stone (US 4,322,020) and Meshberg (US 4,008,830) as

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applied to claims 1-2, 7 and 9 above, further in view of Nomoto et al. (US 6,266,943).

Regarding claims 3 and 4, the combination of Garcia, Stone and Meshberg disclose all the elements of the claimed invention except the seal being in the form of a truncated cone, wherein the thickness is reduced towards the outer end of the annular lip.

Nomoto teaches a dispenser pack including an annular seal (F) on an outer face of the container neck 405, wherein the thickness of the seal is reduced towards the outer end of an annular lip 435a (fig 36). Nomoto discloses the seal (F) pressed radially inward in the form of a truncated cone across an annular space against the cylindrical outside of the pump housing in order to provide tight seal, capable of releasing compressed air, when the inner pressure of the container (D) rises after pump installation (see figures 36, 37 and column 31, lines 34-56).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of the combination of Garcia, Stone and Meshberg with a seal being in the form of a truncated cone, wherein the thickness is reduced towards the outer end of the annular lip, as taught by Nomoto, in order to provide tight seal, capable of releasing compressed air, when the inner pressure of the container rises after pump installation.

Response to Arguments

Applicant's arguments filed 08/03/2010 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Garcia discloses a variable volume dispenser pack including the claimed elements of the invention (see pg. 3 above) but differs from the pending claims in that Garcia is silent to the inner structure of the pump, and the medium being enclosed by a bag made of flexible material.

Stone teaches a variable volume dispenser pack including a pump having the inner structure of the pending claims in order to make possible the extracting of fluid product from the container. Stone further teaches the general aspect or known option of providing a variable volume dispenser pack with a flexible bag, wherein the dispensed product volume is not replaced by a corresponding volume of air or other substance, due to the absence of intake of air.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the pump of Garcia to include inner structure, as taught by Stone, in order to enable the extracting of fluid product from the container.

Furthermore, a person of ordinary skill has good reasons to pursue the known options or finite number of solutions, i.e. a container including a flexible bag, as

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suggested by Stone, or a container including a follower piston, for the predictable result of providing a container whose interior volume reduces in conjunction with the dispensing of the product, since the finite number of options are within the technical grasp of a person of ordinary skill in the art.

The Examiner notes the device of Meshberg further teaches the general aspect or known option of providing a variable volume dispenser pack including a flexible bag wherein the dispensed product volume is not replaced by a corresponding volume of air or other substance, due to the absence of intake of air. Meshberg additionally teaches the bag having an upper aperture rim forming a one piece construction with a wall of the container in order to avoid the necessity of inserting a flexible bag upon assembly.

As further evidence supporting the known option of providing a container with a flexible bag or a follower piston, for providing a container whose interior volume reduces in conjunction with the dispensing of the product, applicant is referred to current art of record Gueret (US 6,352,182) who teaches a dispenser including a container having a variable volume interior being a flexible bag (figs. 1A-1C), or follower piston (figs. 2A-2B).

In response to applicant's argument that "Stone and Meshberg do not provide "a container whose interior volume reduces in conjunction with the dispensing of the product." It is noted that both Stone and Meshberg teach dispensing devices including a container having a variable volume interior (via a flexible bag or via a piston), wherein the dispensed product volume is not replaced by a corresponding volume of air or other

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substance, due to the absence of intake of air, wherein the pump prevents intake of air or other substance into the container.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./
Examiner, Art Unit 3754

/Kenneth Bomberg/
Primary Examiner, Art Unit 3754